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IN THE UNITED STATES FEDERAL DISTRICT COURT
 FOR THE DISTRICT OF OREGON

DARLENE HERNANDEZ, Conservator for
 JOSE ANGEL RAFAEL HERNANDEZ II,

 Plaintiff,

Case No.

v.

COMPLAINT FOR DEPRIVATION
 OF CIVIL RIGHTS AND
 NEGLIGENCE

MARION COUNTY, a political subdivision of
 the State of Oregon, MARION COUNTY
 SHERIFF'S OFFICE, as a Department of
 Marion County, MARION COUNTY JAIL, a
 correctional facility controlled by the Marion
 County Sheriff's Department, JASON
 MEYERS, in his capacity as Marion County
 Sheriff, SHEILA LAWERENCE, in her
 capacity as administrator of Marion County
 correctional institutions, SERGEANT
 HENKIL, an individual, and DOES 1-3,

DEMAND FOR JURY TRIAL

Defendants.

JURY DEMAND

Plaintiff demands a jury trial.

1 **INTRODUCTION**

2 1. COMES NOW, Plaintiff Darlene Hernandez, Conservator for Jose Angel Rafael
3 Hernandez II (hereinafter “Jose”) and brings this action for compensatory and punitive relief
4 pursuant to 42 U.S.C. § 1983, resulting from deprivation of rights under the Eighth and
5 Fourteenth Amendments to the Constitution of the United States. Plaintiff also asserts a claim
6 against defendants under the Oregon Tort Claims Act, ORS 30.260 *et seq.*

7 **JURISDICTION**

8 2. This court has jurisdiction over these claims pursuant to Article III, § 1 of the
9 United States Constitution and 28 U.S.C. § 1331 and 1343, and the Civil Rights Act, 42 U.S.C. §
10 1983.

11 3. Plaintiff further invokes the supplemental jurisdiction of this Court to consider
12 claims arising under the laws of the State of Oregon pursuant to 28 U.S.C. § 1367.

13 **VENUE**

14 4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b).

15 **PARTIES**

16 5. Plaintiff Darlene Hernandez is a resident of Marion County. Ms. Hernandez is the
17 Conservator for Jose duly appointed by the Marion County Circuit Court in May 2015.

18 6. Defendant Marion County is a political subdivision of the State of Oregon.

19 7. Defendant Marion County Sheriff’s Office is a department of Marion County.

20 8. Defendant Marion County Jail is a correctional institution operated by the Marion
21 County Sheriff’s Office.

1 9. Defendants Marion County, Marion County Sheriff's Office, and Marion County
2 Jail are hereinafter referred to as "County Defendants" and "Marion County Defendants."

3 10. Upon information and belief, Jason Meyers ("Sheriff Meyers") was at all times
4 material to this Complaint, the Sheriff of Marion County. He is sued in his official capacity. The
5 actions of Sheriff Meyers alleged in this Complaint were taken acting under color of law.

6 11. Upon information and belief, Shelia Lawrence ("Commander Lawrence") was at
7 all times material to this Complaint, the commander of the institutional division of Marion
8 County Sheriff's Office and administrator of Marion County Jail. She is sued in her official
9 capacity. The actions of Commander Lawrence alleged in this Complaint were taken acting
10 under color of law.

11 12. Upon information and belief, Sergeant Henkil ("Sergeant Henkil") was at all
12 times material to this Complaint, a corrections officer at the Marion County Jail. He is sued in
13 his individual and official capacity. The actions of Sergeant Henkil were taken under color of
14 law.

15 13. In the matter alleged herein, Does (1 through 3) are fictitious names of unknown
16 individual agents of Marion County Defendants, including but not limited to the employees whose
17 specific identities are not known at this time, acted as agent(s) and employee(s) of County
18 Defendants. All acts and statements attributable to Does 1 through 3 were undertaken in the course
19 and scope of their employment and agency relationship with Marion County Defendants, and were
20 sanctioned, ratified or adopted by Marion County Defendants as part of Does 1 through 3's actual,
21 apparent and/or implied authority.
22

FACTS COMMON TO ALL CAUSES OF ACTION

14. On or about December 13, 2012, Jose Angel Rafael Hernandez II (“Jose”) was sentenced by the Marion County Circuit Court to sixty months probation for delivery of a controlled substance to a Minor and Ordered to complete a drug treatment program.

15. On or about April 2013, Jose was admitted to Lifeline Connection Substance Abuse and Mental Health Treatment, a drug treatment facility in Vancouver, Washington, for treatment of addiction to heroin and suicidal thoughts. Shortly after Jose’s admission to the treatment facility, Jose’s physicians informed plaintiff, Jose’s mother, that he was suicidal. Plaintiff then informed Jose’s probation officer that Jose was in a treatment facility and that he was suicidal.

16. On or about May 13, 2013, Jose was released from the drug treatment facility and returned to Marion County, whereupon he took up residence with his parents.

17. On or about June 30, 2013, a Marion County Sheriff’s Deputy arrived at the home of Jose’s parents. The deputy informed Jose’s parents that the Sheriff’s department had received credible information that Jose may attempt to commit suicide and the deputy had been dispatched to check on his well being.

18. On or about July 3, 2013, a Marion County Sheriff’s Deputy Jason Bernards once arrived at the home of Jose’s parents. The deputy wanted to interview Jose in connection to an investigation the deputy was performing. While speaking to Jose’s father, Deputy Bernards informed him that the Sheriff Department’s information showed Jose was suicidal and asked Jose’s father to confirm that information.

1 19. On or about August 14, 2013, Marion County Sheriff's Deputies responded to the
2 Lancaster Mall after receiving reports that a female, walking with a male, appeared to be having
3 a medical problem or was highly intoxicated.

4 20. When deputies arrived at Lancaster Mall, the young female was identified as
5 Emily Rasmussen, and the male was identified as Jose.

6 21. After being stopped by deputies Ms. Rasmussen told deputies that she had taken
7 heroin before being dropped off at the mall with Jose. Following this admission the responding
8 deputies asked Jose if they could search Jose's backpack. During the search the deputies found a
9 knife and syringes but no drugs.

10 22. Jose was arrested for violating his probation by being with Ms. Rasmussen, and
11 for being a felon in possession of weapon. Jose was taken to the Marion County Jail.

12 23. Upon arriving at the Marion County Jail, Jose was booked into the jail. Despite
13 the Marion County Sheriff Office's knowledge of Jose's suicidal tendencies, Jose was placed in
14 a solitary cell and was not placed on suicide watch.

15 24. On or about August 17, 2013, Jose was found hanging by his neck in his cell by a
16 bed sheet tied to an overhead air-vent.

17 25. Jose was taken to Salem Hospital for immediate medical attention. Upon his
18 arrival at the hospital a nurse asked Sergeant Henkil if the hospital could notify Jose's family of
19 his arrival. Sergeant Henkil denied this request. Several hours after Jose arrived at Salem
20 Hospital; the Marion County Jail released Jose, and recalled Sergeant Henkil. Jose's family still
21 had not been notified.
22

1 26. On or about 10:00 PM, on August 17, 2013, Jose's family was notified that he
2 was in the hospital after a social worker for the hospital found a phone number for Jose's
3 grandparents.

4 **FOR A FIRST CAUSE OF ACTION, PLAINTIFF ALLEGES VIOLATION OF**
5 **CONSTITUTIONAL RIGHTS**
6 **COUNT 1**

7 **(42 U.S.C. 1983, Marion County Defendants, Sheriff Meyers, and Commander Lawrence)**

8 27. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1
9 through 26 as if set forth herein verbatim.

10 28. Marion County operates the Marion County Jail through the Marion County
11 Sheriff's Office and, pursuant to ORS 169.030, and must adhere to the Standards for Local
12 Correctional facilities contained in ORS 169.076.

13 29. Sheriff Meyers, and Commander Lawrence are the policy makers with regard to
14 the Jail and at in that capacity on behalf of the Marion County Commissioners.

15 30. At all times material to this Complaint, Sheriff Meyers and Commander Lawrence
16 were responsible for the care and management of the prisoners confined in the Jail and for
17 establishing and implementing appropriate standards, policies, procedures, customs, and
18 practices designed to recognize and protect mentally ill and suicidal prisoners and detainees.

19 31. At all time material to this Complaint, it was the custom, practice and policy of
20 the County Defendants and Sheriff Meyers, and Commander Lawrence to operate the Jail
21 without adequate mental health services.

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1 32. At all times to this Complaint, it was the custom, practice, and policy of the
2 County Defendants, Sheriff Meyers, and Commander Lawrence to operate the Jail overcapacity,
3 preventing proper oversight of inmates at risk of suicide.

4 33. At all times material to this Complaint, the County Defendants, Sheriff Meyers,
5 and Commander Lawrence failed to comply with State and County standards, policies and
6 procedures, customs and practices mandated by law.

7 34. At all times material to this Complaint, the County Defendants, Sheriff Meyers,
8 and Commander Lawrence operated the Jail under customs and practices in a manner that
9 exhibited deliberate indifference to Jose's Constitutional rights guaranteed under the 8th
10 Amendment, and to the substantial risk of Jose's suicide.

11 35. As a direct result of this deliberate indifference, Jose was injured.

12 36. The County Defendants, Sheriff Meyers, and Commander Lawrence violated
13 Jose's Constitutional rights and such violations proximately caused by Jose to be injured.

14 WHEREFORE, Plaintiff seeks judgment against the Marion County Defendants, Sheriff
15 Meyers, and Commander Lawrence jointly and severally, for an amount which is just and
16 reasonable in the premises, together with interest, costs and attorney fees.

17 **COUNT II**
18 **(42 U.S.C. 1983, Henkil and Does 1-3)**

19 37. Plaintiff repeats and realleges each and every allegation made in paragraphs 1
20 through 36 above as if set forth herein verbatim.

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1 38. Between Jose's intake at the Marion County Jail on August 14, 2013, and Jose's
2 attempted suicide on August 17, 2013, Sergeant Henkil and corrections officers Does 1-3
3 observed Jose's condition.

4 39. Sergeant Henkil and corrections officers Does 1-3 had actual knowledge of Jose's
5 substantial risk of suicide.

6 40. Sergeant Henkil and corrections officers Does 1-3 did not place Jose on suicide
7 watch.

8 41. Sergeant Henkil and corrections officers Does 1-3 did not place Jose in a suicide
9 prevention cell.

10 42. Sergeant Henkil and corrections officers Does 1-3 did not place Jose in a suicide
11 smock.

12 43. Sergeant Henkil and corrections officers Does 1-3 did not remove Jose's
13 possessions.

14 44. Sergeant Henkil and corrections officers Does 1-3 did not make a mental health
15 referral for Jose.

16 45. Despite actual knowledge of Jose's substantial risk for suicide, Sergeant Henkil
17 and corrections officers Does 1-3 failed to provide a reasonable response to this risk by not
18 placing Jose on suicide watch.

19 46. Despite actual knowledge of Jose's substantial risk for suicide, Sergeant Henkil
20 and corrections officers Does 1-3 failed to provide a reasonable response to this risk by not
21 placing Jose in a suicide prevention cell.
22

1 47. Despite actual knowledge of Jose's substantial risk for suicide, Sergeant Henkil
2 and corrections officers Does 1-3 failed to provide a reasonable response to this risk by not
3 placing Jose in a suicide smock.

4 48. Despite actual knowledge of Jose's substantial risk for suicide, Sergeant Henkil
5 and corrections officers Does 1-3 failed to provide a reasonable response to this risk by not
6 removing Jose's possessions.

7 49. Despite actual knowledge of Jose's substantial risk for suicide, Sergeant Henkil
8 and corrections officers Does 1-3 failed to provide a reasonable response to this risk by not
9 making a mental health referral for Jose.

10 50. The actions of Sergeant Henkil and corrections officers Does 1-3 in light of their
11 knowledge of Jose's substantial risk of suicide constitute deliberate indifference to Jose's
12 Constitutional rights guaranteed under the 8th Amendment, and to Jose's substantial risk of
13 suicide.

14 51. As a direct result of this deliberate indifference, Jose was injured.

15 52. Sergeant Henkil and corrections officers Does 1-3 violated Jose's Constitutional
16 rights guaranteed under the 8th Amendment and such violations proximately caused Jose to be
17 injured.

18 WHEREFORE, Plaintiff seeks judgment against Sergeant Henkil and corrections officers
19 Does 1-3 jointly and severally, for an amount which is just and reasonable in the premises,
20 together with interest, costs and attorney fees.

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FOR A SECOND CAUSE OF ACTION, PLAINTIFF ALLEGES NEGLIGENCE

53. Plaintiff repeats and realleges each and every allegation made in paragraphs 1 through 52 above as if set forth herein verbatim.

54. Pursuant to ORS 30.275, plaintiff provided a Tort Claim notice to defendants within 180 days after Jose's attempted suicide. Plaintiff sent the notice by certified mail to Gloria M. Roy, Marion County Counsel, and Jason Myers, Sheriff for Marion County.

55. Upon Jose's arrest defendants had a duty of reasonable care for Jose while Jose remained in their custody.

56. Defendants breached their duty of reasonable care by failing to provide Jose with mental health services in compliance with Department of Corrections and County standards, policies and procedures, customs and practices.

57. Defendants breached their duty of care and were negligent by failing to provide Jose with mandated services.

58. Defendants' failure to place Jose on suicide watch proximately caused Jose to be injured.

59. Defendants' failure to place Jose in a suicide prevention cell proximately caused Jose to be injured.

60. Defendants' failure to place Jose in a suicide smock proximately caused Jose to be injured.

61. Defendants' failure to remove Jose's possessions proximately caused Jose to be injured.

WHEREFORE, Plaintiff seeks judgment against Defendants, jointly and severally, for an amount which is just and reasonable in the premises, together with interest, costs and attorney fees.

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